

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM
17.30.201, 17.30.507, 17.30.516, 17.30.602,
17.30.619, 17.30.622, 17.30.623, 17.30.624,
17.30.625, 17.30.626, 17.30.627, 17.30.628,
17.30.629, 17.30.635, 17.30.702, and
17.30.715 pertaining to permit application,
degradation authorization, and annual permit
fees, specific restrictions for surface water
mixing zones, standard mixing zones for
surface water, definitions, incorporations by
reference, A-1 classification standards, B-1
classification standards, B-2 classification
standards, B-3 classification standards, C-1
classification standards, C-2 classification
standards, I classification standards, C-3
classification standards, general treatment
standards, definitions, and criteria for
determining nonsignificant changes in water
quality

TRANSCRIPT OF THE PUBLIC HEARING

Katherine Orr, Presiding Officer

Montana Department of Environmental Quality
Metcalf Building, Room 111
1520 East Sixth Avenue
Helena, Montana

March 24, 2014
2:00 p.m.

REPORTED BY:

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<p>1 WHEREUPON, the proceedings were had as follows:</p> <p>2 MS. ORR: This hearing is called to order. My</p> <p>3 name is Katherine Orr. I am an attorney with the Attorney</p> <p>4 General's Office, and I'm counsel to the Board of</p> <p>5 Environmental Review. I've been designated to preside</p> <p>6 over this hearing today.</p> <p>7 Let the record show it is 2:00 p.m. on March 24th,</p> <p>8 2014. This hearing is taking place in Room 111 of the</p> <p>9 Metcalf Building, 1520 East Sixth Avenue, Helena, Montana,</p> <p>10 to consider the proposed amendment of the captioned rules,</p> <p>11 ARM 17.30.201 -- and I'm not going to go through the whole</p> <p>12 list, but it starts with 17.30.201, then proceeds with</p> <p>13 17.30.507, 17.30.516, et cetera, pertaining to permit</p> <p>14 application, degradation authorization, and annual permit</p> <p>15 fees, specific restrictions for surface water mixing</p> <p>16 zones, standard mixing zones for surface water,</p> <p>17 definitions, incorporations by reference, A-1</p> <p>18 classification standards, B-1 classification standards,</p> <p>19 B-2 classification standards, B-3 classification</p> <p>20 standards, C-1, C-2, C-3 classification standards, general</p> <p>21 treatment standards, definitions, and criteria for</p> <p>22 determining nonsignificant changes in water quality.</p> <p>23 And before I go forward, would it be better -- Will</p> <p>24 people be planning to come to the podium to speak? I</p> <p>25 guess we'll do that, or else I can move it if it's in the</p> <p style="text-align: right;">3</p>	<p>1 Commerce, Department of Labor and Industry, Department of</p> <p>2 Livestock, the Office of the State Auditor and Insurance</p> <p>3 Commissioner, and the Office of Economic Development.</p> <p>4 The Education and Local Government Interim</p> <p>5 Committee -- excuse me for a minute -- over the State</p> <p>6 Board of Education, the Board of Public Education, the</p> <p>7 Board of Regents of Higher Education, and the Office of</p> <p>8 Public Instruction.</p> <p>9 Children, Families, Health, and Human Services Interim</p> <p>10 Committee, over the Department of Public Health and Human</p> <p>11 Services.</p> <p>12 Law and Justice Interim Committee, over the Department</p> <p>13 of Corrections and Department of Justice.</p> <p>14 Energy and Telecommunications Interim Committee, over</p> <p>15 the Department of Public Service Regulation.</p> <p>16 Revenue and Transportation Interim Committee, over</p> <p>17 Department of Revenue and the Department of</p> <p>18 Transportation.</p> <p>19 The State Administration and Veterans' Affairs Interim</p> <p>20 Committee, over the Departments of Administration and</p> <p>21 Military Affairs and the Office of Secretary of State.</p> <p>22 And the Environmental Quality Council, over the</p> <p>23 Department of Environmental Quality, Department of Fish,</p> <p>24 Wildlife & Parks, and the Department of Natural Resources</p> <p>25 and Conservation.</p> <p style="text-align: right;">5</p>
<p>1 way.</p> <p>2 Notice of this hearing was published in the Montana</p> <p>3 Administrative Register under MAR Notice No. 17-356 on</p> <p>4 February 13th, 2014. And the Montana Code Annotated</p> <p>5 Section 2-4-302(7) requires me to read what's called the</p> <p>6 Notice of Function of the Administrative Rule Review</p> <p>7 Committee. It consists of a list of the legislative</p> <p>8 committees and the departments over which those committees</p> <p>9 preside or oversee, and the Environmental Quality Council</p> <p>10 oversees various departments, which I'll read, including</p> <p>11 the Department of Environmental Quality. And the Board is</p> <p>12 administratively attached to the Department of</p> <p>13 Environmental Quality, even though this statement doesn't</p> <p>14 say that specifically.</p> <p>15 Notice of Function of Administrative Rule Review</p> <p>16 Committee. Interim Committees and the Environmental</p> <p>17 Quality Council. Administrative rule review is a function</p> <p>18 of interim committees and the Environmental Quality</p> <p>19 Council, EQC. These interim committees and the EQC have</p> <p>20 administrative rule review, program evaluation, and</p> <p>21 monitoring functions for the following executive branch</p> <p>22 agencies and the entities attached to agencies for</p> <p>23 administrative purposes.</p> <p>24 The Economic Affairs Interim Committee has oversight</p> <p>25 responsibility over the Department of Agriculture,</p> <p style="text-align: right;">4</p>	<p>1 These interim committees and the EQC have the</p> <p>2 authority to make recommendations to an agency regarding</p> <p>3 the adoption, amendment, or repeal of a rule or to request</p> <p>4 that the agency prepare a statement of the estimated</p> <p>5 economic impact of a proposal. They also may poll the</p> <p>6 members of the Legislature to determine if a proposed rule</p> <p>7 is consistent with the intent of the Legislature or,</p> <p>8 during a legislative session, introduce a bill repealing a</p> <p>9 rule, or directing an agency to adopt or amend a rule, or</p> <p>10 a Joint Resolution recommending that an agency adopt,</p> <p>11 amend, or repeal a rule.</p> <p>12 The interim committees and the EQC welcome comments</p> <p>13 and invite members of the public to appear before them or</p> <p>14 to send written statements in order to bring to their</p> <p>15 attention any difficulties with the existing or proposed</p> <p>16 rules. The mailing address is P.O. Box 201706, Helena,</p> <p>17 Montana 59620-1706.</p> <p>18 I'm also advising everyone present today of the</p> <p>19 requirement in Montana law that agencies of state</p> <p>20 government create and maintain a list of persons who are</p> <p>21 interested in that agency's rulemaking proceedings. An</p> <p>22 agency's interested persons list must indicate the subject</p> <p>23 or subjects in which each person on the list is</p> <p>24 interested. Persons whose names are on the list will</p> <p>25 receive notice by mail of all agency rulemaking notices in</p> <p style="text-align: right;">6</p>

<p>1 the subjects indicated.</p> <p>2 Anyone here today who would like to have his or her</p> <p>3 name placed on the Board's interested persons list may do</p> <p>4 so by contacting me at the conclusion of today's hearing.</p> <p>5 There are copies today, outside of the hearing room here,</p> <p>6 of a document describing the Board's rulemaking authority</p> <p>7 according to various bureaus within the Department. That</p> <p>8 document may be useful for you to indicate which areas of</p> <p>9 rulemaking interest you so that the Department, or the</p> <p>10 Board in this case, can notify you of future rulemaking</p> <p>11 hearings in that area.</p> <p>12 The Secretary of State's Model Rules require me to</p> <p>13 summarize the major provisions of the hearing notice,</p> <p>14 although given its length, I'm just going to go ahead and</p> <p>15 refer everyone to the actual notice of public hearing.</p> <p>16 Paragraph 6 of the hearing notice indicates that</p> <p>17 interested persons may submit their data, views, or</p> <p>18 arguments, either orally or in writing, at this hearing.</p> <p>19 The notice also indicates that individuals may submit</p> <p>20 written data, views, or arguments to the Board no later</p> <p>21 than 5:00 p.m. on April 1st, 2014. To be guaranteed</p> <p>22 consideration, mailed comments must be postmarked on or</p> <p>23 before that date. Written data, views, or arguments may,</p> <p>24 on or prior to that deadline, be submitted to</p> <p>25 Elois Johnson, who is a paralegal at the Department here.</p> <p style="text-align: right;">7</p>	<p>1 variable process dependent upon judgment. Per 75-5-313,</p> <p>2 MCA, adoption of base numeric nutrient standards will</p> <p>3 allow the Department to utilize a variance process which</p> <p>4 allows the standards to be implemented gradually. Under</p> <p>5 current rules, the narrative standard, variances per</p> <p>6 75-5-313 are not available.</p> <p>7 Numeric criteria provide the regulated community</p> <p>8 standards against which they can strike agreements; for</p> <p>9 example, carry out pollution trading with other point as</p> <p>10 well as non-point sources of nutrients. Numeric nutrient</p> <p>11 standards empower those along the rivers who are regulated</p> <p>12 to make their own decisions as to how they can best</p> <p>13 achieve long-term water quality compliance, be that</p> <p>14 through trading, water reuse, recharge, land application,</p> <p>15 et cetera.</p> <p>16 Finally, the standards provide clarity as to what the</p> <p>17 true water quality endpoints are, which allow for more</p> <p>18 informed capital investments and wastewater</p> <p>19 infrastructure. The current narrative standard would</p> <p>20 never provide the regulatory clarity that the numeric</p> <p>21 standards will.</p> <p>22 Next I'd like to go over some of the details of the</p> <p>23 base numeric nutrient standards and how they were</p> <p>24 developed. They were developed using objective scientific</p> <p>25 approaches. Analyses were conducted to determine a</p> <p style="text-align: right;">9</p>
<p>1 And her address is Box 200901, Helena, Montana 59620, and</p> <p>2 she can provide fax or e-mail instructions. Her phone is</p> <p>3 406-444-4386.</p> <p>4 And today I'll stop reading and we'll actually get to</p> <p>5 the substance of this hearing. First, we'll hear from the</p> <p>6 department representative, who will provide an outline and</p> <p>7 explanation of the amendments. And then I'd like to hear</p> <p>8 from proponents and then opponents and then, finally,</p> <p>9 anyone wishing to be heard and not wanting to be put in</p> <p>10 the category of opponent or proponent. So with that, why</p> <p>11 don't we start with the Department.</p> <p>12 DR. SUPLEE: Good afternoon. My name is</p> <p>13 Dr. Michael Suplee, and I am a limnologist with the</p> <p>14 Montana Department of Environmental Quality, and I work in</p> <p>15 the Water Quality Standards Unit.</p> <p>16 The first part of my testimony pertains to the base</p> <p>17 numeric nutrient standards for Wadeable streams and large</p> <p>18 rivers. I will provide documents that support the</p> <p>19 scientific and technical basis of the proposed standards.</p> <p>20 Later in my testimony, I will address the status of</p> <p>21 nutrient standards for lakes and reservoirs.</p> <p>22 I'd first like to touch on why numeric nitrogen and</p> <p>23 phosphorous standards are needed. Adoption of numeric</p> <p>24 nutrient criteria will forgo the need for a case-by-case</p> <p>25 interpretation of our narrative criteria, which is a</p> <p style="text-align: right;">8</p>	<p>1 threshold or thresholds where harm to the beneficial uses</p> <p>2 of Montana's surface waters occur. The criteria were then</p> <p>3 set at levels that should protect the water body</p> <p>4 beneficial uses from harm. Criteria for both nitrogen and</p> <p>5 phosphorous are being proposed. Many regional scientific</p> <p>6 studies show that both nitrogen and phosphorous are</p> <p>7 co-limited. More commonly, nitrogen is limiting in our</p> <p>8 streams as well as phosphorous.</p> <p>9 All river and stream criteria in Department Circular</p> <p>10 DEQ-12A, which is part of the rule package, have been</p> <p>11 externally peer-reviewed by independent academic</p> <p>12 reviewers.</p> <p>13 Now I want to get into the details of the criteria</p> <p>14 that are found in Circular DEQ-12A in Table 12A-1. The</p> <p>15 first thing folks will notice is that the criteria vary by</p> <p>16 geographic regions; they are broken up by ecoregions to</p> <p>17 reflect the local stream ecology and sensitivity to</p> <p>18 nutrient pollution. Smaller-scale ecoregions, which in</p> <p>19 the document are referred to as Level IVs, are broken out</p> <p>20 when they have higher natural nutrients than the coarser</p> <p>21 Level IIIs that they are in.</p> <p>22 I would like to submit to the Board for their</p> <p>23 consideration this (indicating) department publication,</p> <p>24 "Scientific and Technical Basis of the Numeric Nutrient</p> <p>25 Criteria for Montana's Wadeable Streams and Rivers," 2008.</p> <p style="text-align: right;">10</p>

<p>1 And I would like specifically to direct the Board to</p> <p>2 section 4.0, where the rationale for the geographic</p> <p>3 stratification of the nutrient standards is presented.</p> <p>4 MS. ORR: Thank you.</p> <p>5 DR. SUPLEE: The criteria were developed using</p> <p>6 three basic approaches. The first was a consideration of</p> <p>7 dose-response studies. That's the relationship between</p> <p>8 nutrient concentrations and some sort of an effect in</p> <p>9 streams and rivers. Two, consideration of nutrient</p> <p>10 concentration ranges found in our regional reference</p> <p>11 streams. And three, resource ratio theory, that is, the</p> <p>12 N:P ratio, also referred to as the Redfield ratio.</p> <p>13 Of these three, dose-response studies played the</p> <p>14 largest role. Impacts to dissolved oxygen concentrations,</p> <p>15 which are related to fish and aquatic life, and thresholds</p> <p>16 for nuisance algae growth, per a public-perception study</p> <p>17 carried out in Montana, were large but not the only</p> <p>18 drivers in establishing the criteria. Dozens, if not</p> <p>19 hundreds, of scientific articles were consulted. The</p> <p>20 Department itself carried out several field studies to</p> <p>21 develop and refine the standards between 2001 and 2011.</p> <p>22 I would now like to submit for the Board's</p> <p>23 consideration several documents which pertain to these</p> <p>24 three components: First, dose-response studies. Studies</p> <p>25 applicable to each ecoregion are found in "Scientific and</p> <p style="text-align: right;">11</p>	<p>1 Expansion of the 1992 Benchmark Biology Study."</p> <p>2 MS. ORR: Thank you.</p> <p>3 DR. SUPLEE: Finally on this topic, the third</p> <p>4 category of importance was resource ratio theory. I would</p> <p>5 like to submit these (indicating) two scientific articles,</p> <p>6 one by Kahlert, 1998, and the other by Hillebrand, 1999,</p> <p>7 which show that the nitrogen:phosphorous ratio of benthic</p> <p>8 algae is very close to the Redfield ratio; that is, 7:1 by</p> <p>9 mass. This is important, since benthic algae are key</p> <p>10 drivers of primary productivity in Wadeable streams and</p> <p>11 rivers, and this data was used to help derive the</p> <p>12 criteria.</p> <p>13 MS. ORR: Thank you.</p> <p>14 DR. SUPLEE: So that is my material relating to</p> <p>15 the development of criteria.</p> <p>16 Next I'd like to go over another aspect of the</p> <p>17 criteria. They don't apply year-round, they apply</p> <p>18 seasonally, specifically, summer and early fall, to</p> <p>19 protect streams when algal growth and plant growth peaks</p> <p>20 and ensuing water quality impacts are maximal. The</p> <p>21 criteria can apply year-round if a stream affects a</p> <p>22 downstream lake or reservoir, but that would be determined</p> <p>23 on a case-by-case basis in a permit or TMDL.</p> <p>24 I would like to submit for the Board's consideration</p> <p>25 this (indicating) scientific article by myself, written in</p> <p style="text-align: right;">13</p>
<p>1 Technical Basis of the Numeric Nutrient Criteria for</p> <p>2 Montana's Wadeable Streams and Rivers, Update 1."</p> <p>3 MS. ORR: Thank you.</p> <p>4 DR. SUPLEE: Of particular importance was the</p> <p>5 Montana algal growth public-perception study, provided</p> <p>6 here (indicating) in the scientific article by myself,</p> <p>7 entitled "How Green is too Green? Public Opinion of what</p> <p>8 Constitutes Undesirable Algae Levels in Streams."</p> <p>9 MS. ORR: Thank you.</p> <p>10 DR. SUPLEE: The linkage between elevated benthic</p> <p>11 algal growth and dissolved oxygen levels is also found in</p> <p>12 Appendix B.1.2 of the Department's "Assessment Methodology</p> <p>13 for Determining" Impacts by Wadeable Streams -- or</p> <p>14 "Impacts by Nitrogen and Phosphorous to Wadeable Streams."</p> <p>15 That, along with this memorandum from myself and Kyle</p> <p>16 Flynn of the Department, elaborate upon the effects of low</p> <p>17 DO and nutrients and how they are linked.</p> <p>18 Next I'd like to introduce into the record this</p> <p>19 (indicating) document that gets at reference sites. If</p> <p>20 you'll recall, I mentioned that reference streams are one</p> <p>21 of the three major pieces we used to help derive the</p> <p>22 criteria. We developed an assessment process for</p> <p>23 identifying reference streams in 2005, and that is</p> <p>24 documented in this document entitled "Identification and</p> <p>25 Assessment of Montana Reference Streams: A Follow-Up and</p> <p style="text-align: right;">12</p>	<p>1 2007, "Developing Nutrient Criteria for Streams: An</p> <p>2 Evaluation of the Frequency Distribution Method," which</p> <p>3 describes the rationale and derivation of the seasonal</p> <p>4 basis of the nutrient standards.</p> <p>5 MS. ORR: Thank you.</p> <p>6 DR. SUPLEE: In Department Circular DEQ-12A,</p> <p>7 there are site-specific criteria for streams whose water</p> <p>8 quality is atypical for the ecoregion they are in. This</p> <p>9 occurs because these streams are influenced by specific</p> <p>10 nutrient sources; for example, an upstream lake or an</p> <p>11 upstream Level IV ecoregion with high natural total</p> <p>12 phosphorous. Methods used to derive site-specific</p> <p>13 nutrient criteria are found in section 4.0 of "Scientific</p> <p>14 and Technical Basis of the Nutrient Criteria for Montana's</p> <p>15 Wadeable Streams and Rivers, Update 1," which I submitted</p> <p>16 earlier.</p> <p>17 Next I'd like to move on to how we develop nutrient</p> <p>18 standards for large rivers. We have large river criteria</p> <p>19 in Table 12A-1, again in Department Circular DEQ-12A.</p> <p>20 Most of these large river criteria are under development,</p> <p>21 but we have completed some for the lower Yellowstone</p> <p>22 River. I would like to submit for the Board's</p> <p>23 consideration first this (indicating) department document</p> <p>24 from 2010, "Defining Large Rivers in Montana Using a</p> <p>25 Wadeability Index." This document lays out the process by</p> <p style="text-align: right;">14</p>

<p>1 which we define large rivers in Montana for the purpose of</p> <p>2 water quality management.</p> <p>3 MS. ORR: Thank you.</p> <p>4 DR. SUPLEE: Now, the development of nutrient</p> <p>5 standards for large rivers took a completely different</p> <p>6 approach than we used for wadeable streams. Wadeable</p> <p>7 streams were based on the processes that I summarized</p> <p>8 earlier. In the case of large rivers, because of their</p> <p>9 unique characteristics, we used process-based computer</p> <p>10 simulation models, QUAL2K specifically. The models'</p> <p>11 governing equations represent physical relationships</p> <p>12 between nutrient availability, algal uptake kinetics, and</p> <p>13 other dependencies, such as light, flow, and temperature.</p> <p>14 We altered model conditions until nutrients began to</p> <p>15 impact other existing water quality standards which we</p> <p>16 already have on the books; for example, pH, dissolved</p> <p>17 oxygen, benthic algal density, total dissolved gas. The</p> <p>18 resulting criteria are in the same order of magnitude as</p> <p>19 those derived, independently I might add, for wadeable</p> <p>20 streams, which lends support to the general process and</p> <p>21 the magnitude of the criteria.</p> <p>22 I would like to submit for the Board's consideration</p> <p>23 this (indicating) department document, "Using a Computer</p> <p>24 Water Quality Model to Derive Numeric Nutrient Criteria</p> <p>25 for the Lower Yellowstone River, Montana."</p> <p style="text-align: right;">15</p>	<p>1 the recent and historic lake monitoring data, time to</p> <p>2 analyze it, and an opportunity to discuss it with the</p> <p>3 Department and other stakeholders. The Department</p> <p>4 believes that this is a reasonable request that should be</p> <p>5 granted.</p> <p>6 The process will take a number of months to complete,</p> <p>7 which is why the Department recommends that the Board not</p> <p>8 adopt the numeric nutrient standards now for Flathead</p> <p>9 Lake. The Department intends to work with the parties and</p> <p>10 return to the Board with proposed numeric nutrient</p> <p>11 standards at a later date. Rulemaking can be initiated at</p> <p>12 that time. Our commitment to ensuring water quality in</p> <p>13 the lake stands. We would like just some more time to</p> <p>14 revisit this approach.</p> <p>15 Next I'd like to touch on the new low-flow design flow</p> <p>16 for nutrient discharges. This pertains to MPDES</p> <p>17 permitting. The way the ARMs, the Administrative Rules of</p> <p>18 Montana are currently written, they require the Department</p> <p>19 to determine a low-flow specifically for nitrogen and</p> <p>20 phosphorous. This is found in 17.30.635(2). We have done</p> <p>21 that, and the Department is proposing the seasonal 14Q5.</p> <p>22 This flow is specific to nutrient discharges. It's</p> <p>23 based on the algal growth patterns in streams and rivers</p> <p>24 and the time it takes algal growth to peak and become</p> <p>25 nuisance. And it's consistent with the EPA's frequency</p> <p style="text-align: right;">17</p>
<p>1 MS. ORR: Thank you.</p> <p>2 DR. SUPLEE: Next I'd like to discuss, as I said</p> <p>3 earlier in my testimony, where we're at with the</p> <p>4 development of lake and reservoir standards. Lake and</p> <p>5 reservoir standards are largely under development. A</p> <p>6 single lake has been proposed, Flathead Lake, which I will</p> <p>7 address specifically here.</p> <p>8 The Department respectfully requests that the Board</p> <p>9 not adopt numeric nutrient standards for Flathead Lake</p> <p>10 just yet. The numeric nutrient standards for Flathead</p> <p>11 Lake in the proposed rules are based on the outcome of a</p> <p>12 series of public meetings undertaken in the 1990s by the</p> <p>13 Flathead Basin Commission, the Department, and</p> <p>14 stakeholders in the Flathead region. The parties in that</p> <p>15 process reached consensus that the existing condition of</p> <p>16 the lake was an appropriate goal for setting water quality</p> <p>17 standards for the lake.</p> <p>18 The proposed standards today are the concentration of</p> <p>19 N and P that were in the lake at that time. However,</p> <p>20 since the rulemaking notice was published, the Department</p> <p>21 has received communications from the Flathead Basin</p> <p>22 Commission and others questioning whether the existing</p> <p>23 condition of the lake has changed and whether the existing</p> <p>24 conditions is the appropriate standard to protect the</p> <p>25 uses. They have requested that they be given access to</p> <p style="text-align: right;">16</p>	<p>1 and duration recommendations for allowable exceedance</p> <p>2 frequency once every three years.</p> <p>3 I'd like to submit for the Board's consideration this</p> <p>4 (indicating) technical memorandum from myself and</p> <p>5 Kyle Flynn of the Department which addresses the</p> <p>6 rationales and methods used to develop the seasonal</p> <p>7 14Q5 low-flow design flow.</p> <p>8 MS. ORR: Thank you.</p> <p>9 DR. SUPLEE: The rules also have specificity in</p> <p>10 terms of permitting and how permitting views nutrient</p> <p>11 standards. Rule modifications in the package allow for</p> <p>12 mixing of nutrients and nutrient effluents with the full</p> <p>13 14Q5 when a standard mixing zone is calculated. That's a</p> <p>14 new change in the rules. Permit limits will be expressed</p> <p>15 as an average monthly limit. This is defined in Circular</p> <p>16 DEQ-12A. Permitting methods in the new rules also will</p> <p>17 follow EPA's Technical Support Document. The Department</p> <p>18 uses the Technical Support Document for all water-related</p> <p>19 permitting currently.</p> <p>20 A few other details. Department Circular DEQ-12A is</p> <p>21 incorporated throughout the surface water classes, which</p> <p>22 was necessary in order to incorporate those into our rules</p> <p>23 and our standards.</p> <p>24 Modifications to the non-degradation rules, which are</p> <p>25 part of subchapter 5, allow that base numeric nutrient</p> <p style="text-align: right;">18</p>

<p>1 standards are harmful parameters, not toxic, at these</p> <p>2 concentrations. The non-severability clause in</p> <p>3 17.30.715(4) -- again, this pertains to the</p> <p>4 non-degradation rules -- however, needs to be made</p> <p>5 consistent with the other clauses in the rule package. It</p> <p>6 needs to address the situation in which variances expire,</p> <p>7 and so that's something that will need to be fine-tuned</p> <p>8 going forward.</p> <p>9 And our department's attorney has prepared a 311 and</p> <p>10 521 takings analysis, and I would like to submit that</p> <p>11 analysis to the Board at this time.</p> <p>12 MS. ORR: Thank you.</p> <p>13 DR. SUPLEE: In closing, the Department has been</p> <p>14 developing and refining the base numeric nutrient criteria</p> <p>15 over the past 12 years. This work has included extensive</p> <p>16 reviews of the scientific literature, several</p> <p>17 on-the-ground scientific studies carried out by the</p> <p>18 Department, identification of impact thresholds, and</p> <p>19 external academic peer review of the criteria and the</p> <p>20 methods used to develop the criteria. The criteria</p> <p>21 recommendations in Department Circular DEQ-12A reflect the</p> <p>22 Department's best scientific and technical analyses to</p> <p>23 date.</p> <p>24 Extensive public outreach over the past six years has</p> <p>25 assured the Department has a practical and workable means</p> <p style="text-align: right;">19</p>	<p>1 ensure the intent and understanding of the Nutrient Work</p> <p>2 Group is accomplished. The League of Cities does not</p> <p>3 dispute the research conducted by the League -- or by,</p> <p>4 excuse me, DEQ in establishing the nutrient standards and</p> <p>5 their effect on water quality.</p> <p>6 We have expressed and continue to express concerns</p> <p>7 that the proposed standards are not achievable financially</p> <p>8 or technically at this time. The proposed rules will</p> <p>9 require technologies that are not available in the</p> <p>10 foreseeable future. Proposed phosphorous requirements</p> <p>11 would require significant financial investments by all</p> <p>12 point source dischargers in order to be implemented. The</p> <p>13 required nitrogen values cannot be achieved with current</p> <p>14 technologies that are available to all point sources.</p> <p>15 Even using reverse osmosis and a membrane plant would only</p> <p>16 get us to a figure of 1 milligram per liter and the</p> <p>17 proposed rules are .3. It is because dischargers cannot</p> <p>18 meet the proposed numeric nutrient limits that the</p> <p>19 proposed variance process is critical to the adoption and</p> <p>20 the process of numeric nutrient standards.</p> <p>21 The League of Cities requests that the following areas</p> <p>22 of the proposed rules have continued discussions before</p> <p>23 implementation: Protection of downstream use. Before</p> <p>24 final implementation of the numeric nutrient standards,</p> <p>25 clarification and agreement on the extent point source</p> <p style="text-align: right;">21</p>
<p>1 of implementing the standards over time via variances as</p> <p>2 presented this morning in the Department's rule hearing.</p> <p>3 Thank you.</p> <p>4 MS. ORR: Thank you.</p> <p>5 At this time, I'd like to hear from proponents of the</p> <p>6 rule.</p> <p>7 Good afternoon.</p> <p>8 MR. MUMFORD: Good afternoon. My name is</p> <p>9 David Mumford. I'm the public works director in Billings,</p> <p>10 Montana, and chair of the Montana League of Cities and</p> <p>11 Towns Water and Wastewater Committee.</p> <p>12 Montana League of Cities and Towns appreciates the</p> <p>13 opportunity to comment on the proposed numeric nutrient</p> <p>14 standards and corresponding rules and circulars. The</p> <p>15 League of Cities has appreciated the willingness of the</p> <p>16 Department's staff in working with the Nutrient Work Group</p> <p>17 to develop and improve the rules and to help with</p> <p>18 understanding. This has been a very long and at times</p> <p>19 frustrating process, but has worked to improve the</p> <p>20 communications and, I believe, the final rules.</p> <p>21 The League of Cities supports the proposed rules</p> <p>22 pending before the Board of Environmental Review and the</p> <p>23 accompanying documents, understanding that the</p> <p>24 corresponding documents all have to be approved at the</p> <p>25 same time. The adoption of all rules would be required to</p> <p style="text-align: right;">20</p>	<p>1 dischargers will be responsible for the protection of</p> <p>2 downstream use and what considerations DEQ and EPA will</p> <p>3 place on non-point source dischargers in developing point</p> <p>4 source discharge responsibilities and requirements.</p> <p>5 We would also ask that a continued discussion on the</p> <p>6 effects of non-point source dischargers be continued. We</p> <p>7 would ask that, working with the League of Cities and</p> <p>8 other bodies that are affected by this, that eventually</p> <p>9 legislation be developed and brought forward for</p> <p>10 consideration by the State Legislature on how to work</p> <p>11 and -- and mitigate the effects of non-point source</p> <p>12 dischargers.</p> <p>13 I want to thank the Department of Environmental</p> <p>14 Quality, EPA, the Nutrient Work Group, and all the others</p> <p>15 that have worked very hard for a number of years to</p> <p>16 develop the proposed standards and accompanying documents</p> <p>17 and to ensure that Montana's waters are kept clean.</p> <p>18 Thank you.</p> <p>19 MS. ORR: Thank you, Mr. Mumford.</p> <p>20 Are there any other proponents?</p> <p>21 MS. BRICK: My name is Christine Brick, with the</p> <p>22 Clark Fork Coalition out of Missoula, Montana. And I</p> <p>23 would like to speak very broadly about the nutrient</p> <p>24 standards themselves.</p> <p>25 We are proponents of the standards from a scientific</p> <p style="text-align: right;">22</p>

<p>1 basis. We believe that they've been very carefully 2 considered. They've been discussed in detail and debated 3 in detail in the Nutrient Work Group. A number of 4 different scenarios have been run looking at the sort of 5 what-if situations for all kinds of potential discharges, 6 and the nutrients -- you know, the nutrient standards have 7 been developed accordingly and taking a lot of these 8 things into account. And so I think what I like about 9 them is that they are a multiphase approach, using, you 10 know, both the reference condition, the dose-response, and 11 the Redfield ratio, with the heaviest emphasis on 12 dose-response. I think that's probably the most 13 reasonable way to look at the standards.</p> <p>14 I also like the fact that they're flexible. Because 15 with nutrients it is not a one-size-fits-all type of 16 standard, and these criteria are definitely not one size 17 fits all. So I like the fact that they can be adjusted 18 over time.</p> <p>19 We will have some more detailed comments to present in 20 writing, but I just wanted to, for the time being, say 21 that, overall, we believe the Department has done an 22 excellent job; that Montana actually probably stands out 23 as a good example of how to scientifically derive nutrient 24 standards; and we support them from that perspective.</p> <p>25 Thank you.</p> <p style="text-align: right;">23</p>	<p>1 meet the numeric concentrations for nitrogen and 2 phosphorous imposed by the new standards. Without the 3 statutory authority for the Department to authorize 4 variances over the next 20 years, and the mandatory 5 application of general variances if certain criteria are 6 met, MPA would have urged the Legislature to abandon 7 pursuit of the numeric standards instead of supporting the 8 legislation that we did in 2011.</p> <p>9 MPA has submitted written comments.</p> <p>10 I must note the fear of the unknown many in the 11 regulated community, both the municipalities and 12 industrial operators with wastewater permits, have with 13 this rulemaking. The economic implications of it are 14 unknown. We simply do not know whether new potential 15 employers will be deterred from doing business in Montana. 16 We do not know whether some existing businesses with 17 discharge permits will find it impossible to continue to 18 do business in Montana following implementation of new 19 numeric standards; it's also unclear.</p> <p>20 We do know that it will be very difficult to meet the 21 end-of-pipe standards required by the rule package for a 22 permittee to receive a general variance. We also know 23 that we are guinea pigs in this experiment. Montana is 24 among a small number of states that have studied and moved 25 to adopt numeric standards for rivers and streams. Six</p> <p style="text-align: right;">25</p>
<p>1 MS. ORR: Thank you.</p> <p>2 Other proponents?</p> <p>3 (No response.)</p> <p>4 MS. ORR: Okay. We'll move to the opponents.</p> <p>5 Are there any opponents?</p> <p>6 MR. GALT: For the record, my name is Dave Galt.</p> <p>7 I'm the executive director of the Montana Petroleum 8 Association. Madam Hearings Officer, I just gave you our 9 written comments as well, so you've got an attachment plus 10 more detailed comments. I'm going to summarize these in a 11 lengthy summary, but I'm going to go through those.</p> <p>12 MS. ORR: Thank you.</p> <p>13 MR. GALT: MPA has served as a member of the 14 Nutrient Working Group since it was created in 2009. 15 We've participated in the Nutrient Working Group meetings 16 and submitted two letters on behalf of the MPA members to 17 the DEQ in 2012 and '13 in response to earlier drafts 18 pertaining to this rulemaking. We've secured counsel for 19 this entire process, and our counsel is here today, 20 Mr. Mercer.</p> <p>21 In 2011, the Legislature concluded that substantial 22 and widespread economic impacts would result if Montana 23 law required immediate compliance with numeric nutrient 24 standards because the current cost-effective wastewater 25 treatment technology does not exist to allow permittees to</p> <p style="text-align: right;">24</p>	<p>1 months ago, a federal judge noted, quote, "The plaintiffs 2 point out that the states in the Mississippi Basin have no 3 numeric water quality standards for phosphorous in rivers 4 and streams or for nitrogen in any waters. And most 5 states do not attempt to limit nitrogen and phosphorous 6 discharges in their MPDES permits," unquote. None of our 7 neighbors have adopted numeric nutrient standards. It's 8 uncontested that we will have numeric standards when other 9 states will not.</p> <p>10 The principal concern that MPA has with these rules is 11 the inadequacy of the severability clause. We recognize 12 that there's some inconsistency between the rules on both 13 the Department side and the BER side. DEQ proposes to add 14 a section 2 to Administrative Rule 17.30.619 and a 15 section 4 to Administrative Rule 17.30.715 as a 16 non-severability clause. As the Department has explained 17 in its comments accompanying the rule, the authority for 18 DEQ to issue a variance and a permittee to operate without 19 complying with the numeric standards pursuant to a 20 variance is crucial to the legislative intent and action. 21 If a court or EPA does anything to nullify a variance 22 authorized by DEQ, the intent behind the legislation would 23 be gutted.</p> <p>24 MPA has worked closely with the Department on the 25 non-severability clause and appreciates the work to</p> <p style="text-align: right;">26</p>

<p>1 include it in the proposed rules. Nonetheless, we ask 2 that the Board modify the draft language because it simply 3 does not go far enough.</p> <p>4 The general variance provision internalized in the 5 rule to be promulgated by DEQ and amplified in DEQ-12B 6 will be of no effect if, after promulgation of the rule, 7 EPA disallows a permit with a general variance for the 8 reason DEQ allowed the permittee to deviate from the 9 numeric nutrient standards based upon the application of a 10 general variance. The essence of the argument is this: 11 The Legislature, without opposition from EPA, used 12 mandatory language in Code 75-5-313(5)(b) to require DEQ 13 to incorporate a general variance in permits if the permit 14 applicant met certain conditions. If EPA, in turn, 15 refuses to allow a permit with a general variance to take 16 place as a result of the inclusion of the variance, the 17 intent of the statute has been nullified with respect to 18 the permittee.</p> <p>19 In such a circumstance, the rules would not -- should 20 not continue to bind permittees. Therefore, MPA has 21 provided the Board of Environmental Review with text to 22 amend the language employed by DEQ in the rule. Without 23 the addition of this language to the rule, the rule will 24 remain in force if EPA rejects a permit with a general 25 variance for the permittee because EPA does not believe</p> <p style="text-align: right;">27</p>	<p>1 variance limits," unquote. MPA recommends that the Board 2 modify the language in all three sections and strike, 3 quote, "nutrient standards variance limits," unquote, and 4 replace it with "the Department's authority to grant 5 variances from the numeric standards for permittees."</p> <p>6 No. 3: In section 3 of the DEQ rule, where the 7 Department explains the reason for the rule, the 8 Department has written that the "statute allows 9 dischargers to be granted variances from base numeric 10 standards in those cases where meeting the standards today 11 would be an unreasonable economic burden or 12 technologically infeasible." We believe it should be 13 rewritten to reflect that "the statute requires DEQ to 14 grant general variances from base numeric standards in 15 those cases where meeting the standards today would be an 16 unreasonable economic burden or technologically infeasible 17 and the permittee meets the end-of-pipe treatment 18 requirements in DEQ-12B."</p> <p>19 Definitions in DEQ-12A and 12B are unclear. Monthly 20 and annual averages are unclear. We've proposed language 21 in our written comments.</p> <p>22 That's all we have. Madam Hearings Officer, we 23 appreciate the Department's work on this. It's been a 24 long -- a long haul on this. And thank you for the 25 opportunity to comment.</p> <p style="text-align: right;">29</p>
<p>1 the permittee is entitled to a general variance.</p> <p>2 In addition, we have two general concerns about an 3 issue not addressed by the draft rules and related 4 documents. Neither the rules nor DEQ-12 address the scope 5 of protection of downstream uses and whether the 6 Department will assert that a discharger has a broader 7 responsibility beyond the first location of loading by any 8 other source, point or non-point. Contributions from 9 point source dischargers are the only discharges addressed 10 through the rules and circulars.</p> <p>11 Specific changes to the draft rules are necessary. In 12 section 3 of the rule before the BER and in section 3 of 13 the rule in the first paragraph of the reason section 14 before DEQ, the draft reads, quote, "In many cases the 15 concentrations are below the limits of current wastewater 16 treatment technology, particularly for nitrogen," unquote. 17 We think it should say, "For nearly all permittees, 18 current wastewater treatment technology would not allow 19 permittees to meet the concentrations for nitrogen and 20 phosphorous without the technology being 21 cost-prohibitive."</p> <p>22 No. 2: On pages 10 and 11 of the BER rule, in each 23 section which describes the rationale for amending the 24 rule, DEQ has explained that the new language is required, 25 in part, to, quote, "incorporate the nutrient standards</p> <p style="text-align: right;">28</p>	<p>1 MS. ORR: Thank you.</p> <p>2 Are there other opponents?</p> <p>3 MS. JOHNSON: Good afternoon, Madam Hearings 4 Officer. For the record, my name is Tammy Johnson. I am 5 the executive director of the Montana Mining Association. 6 The Montana Mining Association is a trade association of 7 mineral developers, producers, refiners, and vendors in 8 the state of Montana. The mining industry is a major 9 employer and taxpayer in this state, and we believe the 10 continued viability and growth of our members' operations 11 are significant factors in the economic health of our 12 state and its citizens.</p> <p>13 The Montana Mining Association has been engaged with 14 the Nutrient Working Group -- although I have not, my 15 predecessor was -- and we have submitted previous opinions 16 and comments to the Montana DEQ. I would like to express 17 my appreciation to the staff of the DEQ who have put in a 18 great deal of hard work on this total package and for 19 their willingness to patiently allow us to ask questions 20 and try to provide us with the answers we seek.</p> <p>21 The Montana Mining Association did support Senate 22 Bill 367, the legislation that authorized this rulemaking 23 effort. And as Mr. Mumford stated, it is very important 24 that the entire package move together, stay together, and 25 continue together. The intent of Senate Bill 367 was, in</p> <p style="text-align: right;">30</p>

<p>1 our opinion, very clear: Adopting numeric nutrient 2 standards would result in substantial and widespread 3 economic impacts, and that only by the variance process 4 being granted to all dischargers could the numeric 5 standards be proposed and adopted. This really is a case 6 where the State put policy ahead of technology, but we 7 agreed with the premise that a Montana-crafted solution 8 was the preferable path forward.</p> <p>9 Our support of the 2011 legislation was based firmly 10 on the belief that all dischargers, current and future, 11 would be eligible for a general variance from the numeric 12 standards. The DEQ also acknowledges the legislative 13 intent and has included a statement to that effect in the 14 guidance document. However, after many years -- many 15 years after both the 2009 and 2011 legislation that has 16 led to this point, we're a little bit less certain that 17 the process will work as intended.</p> <p>18 If future or current dischargers are disallowed the 19 general variance or other appropriate variance either by 20 the State of Montana or, much more likely, by the EPA or 21 through litigation, then there must be a way to bring this 22 process to a full stop. It just isn't tenable to allow 23 the nutrient standards to remain without an effective 24 variance process available to all dischargers. We stand 25 in firm support of the non-severability language as</p> <p style="text-align: right;">31</p>	<p>1 the country, and maybe even specifically in Montana, and 2 gauge the success or lack thereof prior to deciding to 3 adopt their own standards. Perhaps we'll find that we 4 have been absolutely brilliant and have laid out just the 5 right solutions to a difficult problem and will provide a 6 model to our neighbors. I certainly hope that's the case. 7 But one thing is for certain today: Montana will have 8 numeric nutrient standards in place when our neighbors do 9 not. We don't want to see companies making a decision to 10 not locate in Montana or to leave our state because of an 11 onerous, costly, potentially unworkable or sometimes even 12 just impossible to meet package. This overall package 13 simply cannot result in a regulatory moratorium on new 14 business in Montana.</p> <p>15 The MMA will be submitting written comments to the 16 Board prior to the April 1st deadline. I'd like to thank 17 you for your service, your time, and your deliberations. 18 Thank you.</p> <p>19 MS. ORR: Thank you, Ms. Johnson. 20 Are there other opponents? 21 MS. MARQUIS: Good afternoon. My name is 22 Victoria Marquis. I'm an attorney with Crowley Fleck, and 23 I'm here representing Arch Coal and their Otter Creek Coal 24 Project. 25 Arch Coal has a significant concern that the proposed</p> <p style="text-align: right;">33</p>
<p>1 proposed by the Montana Petroleum Association. If this 2 language was included and was unambiguous as to how the 3 process would roll out should we find that the EPA is 4 denying some of these individual permits, we could move 5 very quickly from being in soft opposition to support of 6 this rule package.</p> <p>7 The second issue I will speak to is the lack of 8 clarity as to the interplay of our non-degradation 9 statutes which apply to a new or increased source and the 10 numeric standards and variance rulemaking. There has been 11 no formal policy developed and there is not quite clarity 12 here. The DEQ staff has been willing to explore this 13 subject with our members and has indicated its continued 14 willingness to work with our individual members who may 15 apply for a discharge permit and others to look at the 16 options. We appreciate their commitment and their time, 17 and we trust that we're going to be able to arrive at a 18 workable, lawful solution, not only for our members but 19 others in the state.</p> <p>20 We're going to choose to remain very positive about 21 this process and of the rule package, but, admittedly, we 22 do have some concerns when we see that our immediate 23 neighbors in Idaho, the Dakotas, and Wyoming have not 24 ventured down this path. I suspect they're probably 25 waiting to see how this is going to be handled throughout</p> <p style="text-align: right;">32</p>	<p>1 rule amendments will have adverse and costly impacts on 2 their permitting process for the Otter Creek Project. 3 This issue is important enough that Arch Coal is doing a 4 comprehensive technical review, and we will be submitting 5 our own written comments by the April 1st deadline. 6 The proposed rule amendments add significant 7 uncertainty to the permitting process. It's not clear how 8 the rules will impact stormwater permits. It's not clear 9 how the process will work with the TMDL process. For 10 example, when a water body is not impaired or it hasn't 11 been through the TMDL process yet, it seems that the same 12 stringent numeric standards will apply even though they 13 may not be achievable at all.</p> <p>14 Further, the technology necessary to meet the numeric 15 standards is expensive, and in some cases there may not be 16 a cost-effective treatment available at all. The 17 requirements for a general variance, those are high, and 18 the requirements for an individual variance may be too 19 difficult for industry to meet. For example, the guidance 20 for determining widespread and social economic impacts 21 seems wholly based on loss of jobs, increased social 22 services, and median household income, but there is no 23 consideration for a loss of investment. 24 In addition to meeting this high bar, the applicant 25 must also show the lowest effluent concentration feasible</p> <p style="text-align: right;">34</p>

<p>1 based on achieving the highest attainable condition within 2 the water body. Those terms may allow a great deal of 3 variation or they may allow none, depending on how they're 4 interpreted and also depending on how the TMDL process and 5 the non-impairment status is considered. In any event, 6 the attributes of the receiving water body must be taken 7 into account, and without that this process is too 8 uncertain.</p> <p>9 Lastly, although the variances may be valid for up to 10 20 years, they require review through a public rulemaking 11 process every three years. This adds too much uncertainty 12 where industry and companies such as Arch Coal need 13 long-term stability commensurate with their long-term 14 investment.</p> <p>15 This concludes my comments. Thank you.</p> <p>16 MS. ORR: Thank you, Ms. Marquis.</p> <p>17 Are there other opponents who wish to speak? 18 (No response.)</p> <p>19 MS. ORR: At this time, are there other persons 20 who are in neither category who wish to speak regarding 21 these rules?</p> <p>22 Good afternoon.</p> <p>23 MR. SUGDEN: Hello. My name is Brian Sugden. 24 The last name is spelled S-U-G-D-E-N. I'm a forest 25 hydrologist for Plum Creek based in Columbia Falls.</p> <p style="text-align: right;">35</p>	<p>1 Wadeable streams, not even California. This includes 2 Idaho, where the U.S. EPA has primacy over water quality 3 permitting. Due to the complexity of the standards and 4 the variance process, there is a very real possibility 5 that something may go wrong as these standards are 6 implemented. Because of the possibility of unintended 7 consequences for Montana's communities and businesses, I 8 do question why Montana would be the first western state 9 to move ahead on nutrient criteria.</p> <p>10 That being said, there are steps that can be taken to 11 reduce this risk. First among these is to have a 12 functional non-severability clause in the rules that 13 ensures the integrity of the overall program. There's 14 apparently been some recent legal discussion that suggests 15 that what is currently in the draft rules may not be 16 sufficient. It's essential that this be resolved before 17 the standards and the variance rules are adopted.</p> <p>18 A second essential element is to be adaptable as 19 unanticipated issues are discovered. The Board and EPA 20 should expect that something will have to be modified in 21 this package in the next few years.</p> <p>22 With regard to the standards, it's essential that 23 everything that's required to work together work together 24 right. This includes the circulars that are proposed; the 25 variance process; it also includes the assessment method</p> <p style="text-align: right;">37</p>
<p>1 Plum Creek is the largest private landowner in Montana, 2 with nearly one million acres. I've been participating in 3 the Nutrient Work Group discussions for the past five 4 years, representing forestry interests.</p> <p>5 As a non-point source, forest activities in Montana 6 are regulated through the state Streamside Management Zone 7 Law that mandates 50 to 100-foot buffers on all streams, 8 lakes, and other bodies of water. Additionally, 9 statewide, best management practice implementation on 10 forest lands exceeds 97 percent, based on the most recent 11 biennial statewide audit.</p> <p>12 I'm here today speaking on behalf of Plum Creek. I 13 think the numeric standards proposed for Wadeable streams 14 in Montana appear reasonable and are supported by good 15 science and sound rationale. The Department has done a 16 thoughtful job of stratifying the state into nutrient 17 ecoregions, looking at reference stream conditions, and 18 compiling and conducting research on the linkages between 19 nutrient concentrations and algal response. The 20 Department has been responsive to input provided by 21 stakeholders during the development of these criteria, and 22 that's very much appreciated.</p> <p>23 Should the Board decide to adopt numeric nutrient 24 criteria, Montana will be plowing new ground. No other 25 western state has adopted nutrient criteria for all</p> <p style="text-align: right;">36</p>	<p>1 that the Department uses to determine compliance with the 2 standards; and another essential element is the nutrient 3 standards implementation guidance that provides 4 flexibility in how these numbers are implemented in the 5 various ecoregions.</p> <p>6 I also want to support the Department's recommendation 7 that was mentioned earlier today to postpone adopting 8 standards for Flathead Lake pending a more thorough 9 technical review. This is essential because the science 10 supporting the current numbers in the Phase I TMDL has not 11 been revisited in over 15 years. It is absolutely 12 essential that these numbers are right, that all available 13 data collected on the lake is made available to the 14 Department, and that the process to develop these 15 standards is transparent and involves local stakeholders.</p> <p>16 So, in closing, I want to say that I appreciate the 17 efforts of the Department in working with stakeholders in 18 developing the proposed standards and rule packages and 19 look forward to working with the Department in the future.</p> <p>20 Thank you.</p> <p>21 MS. ORR: Thank you, Mr. Sugden.</p> <p>22 Is there anyone else who wishes to comment?</p> <p>23 MR. WILSON: My name is John Wilson, and I 24 represent the City of Whitefish. My comments won't be 25 technical in nature.</p> <p style="text-align: right;">38</p>

<p>1 I've been involved with the Nutrient Work Group, but</p> <p>2 I'm not speaking as a Nutrient Work Group member. I've</p> <p>3 always been a little bit more on the community impact</p> <p>4 point of view and concerns. And I support what has been</p> <p>5 said, what Brian just said about the importance of</p> <p>6 adaptability. In spite of all the good work that I think</p> <p>7 everyone can be proud of, it's inevitable that there will</p> <p>8 need to be some adjustments and changes, and I hope that</p> <p>9 the rulemaking enables that.</p> <p>10 I also just want to make a couple of comments for the</p> <p>11 record. They're not directly to these standards, but I've</p> <p>12 never been through a rulemaking process before, and I</p> <p>13 guess I expected a board to be here, somebody to have some</p> <p>14 interaction with. But I'm learning as I go along here.</p> <p>15 I think it's obvious to everybody about the extreme</p> <p>16 cost of these regulations, and, hopefully, people are</p> <p>17 thoughtful about that. As we go down in the future, I</p> <p>18 think that's going to have to be some of the motivation</p> <p>19 for some adjustments in the future, not just scientific</p> <p>20 background. You know, the Department and EPA have worked</p> <p>21 with us in the Nutrient Work Group to try to ease that</p> <p>22 burden, but it's still going to be -- even with all the</p> <p>23 provisions, it's going to be a huge, a huge demand on the</p> <p>24 cities, and it's going to have a lot of indirect effects</p> <p>25 with the inability to afford other services for the</p> <p style="text-align: right;">39</p>	<p>1 MS. ORR: Thank you, Mr. Wilson.</p> <p>2 Is there anyone who wishes to comment?</p> <p>3 (No response.)</p> <p>4 MS. ORR: It looks like not.</p> <p>5 I just wanted to say that the Board goes over all of</p> <p>6 the comments. The transcript today will be reviewed by</p> <p>7 the Board, and I have to summarize all of the comments,</p> <p>8 and then there will be a board meeting coming up in May.</p> <p>9 I would assume that it would -- the final notice of</p> <p>10 adoption will be heard by the Board in May. So if anyone</p> <p>11 else here wishes to attend that, you're certainly -- there</p> <p>12 will be public notice of that, of course.</p> <p>13 Is there anything else that anyone wishes to say at</p> <p>14 this time?</p> <p>15 (No response.)</p> <p>16 MS. ORR: It looks like the commenters have put</p> <p>17 in their input, and this hearing is closed.</p> <p>18 Thank you, everybody.</p> <p>19 (The hearing was adjourned at 3:01 p.m.)</p> <p>20 * * * * *</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">41</p>
<p>1 community when the ratepayers and taxpayers are tapped out</p> <p>2 paying for sewer bills.</p> <p>3 I also think that there's a need for a lot of</p> <p>4 outreach, because people are going to be surprised by</p> <p>5 this. Even if they've studied it, I doubt very many</p> <p>6 people understand what's coming. I certainly know I</p> <p>7 don't, although I'm not a technically proficient person.</p> <p>8 There's going to be a lot of need for public education,</p> <p>9 and I think even after that people are going to be upset</p> <p>10 and resistant. I think the Board of Environmental Review</p> <p>11 is going to see a lot more permit appeals and enforcement</p> <p>12 actions, because it's just going to be a very hard thing</p> <p>13 to get through. And I think the more the public can</p> <p>14 understand what's coming, can find a way, through</p> <p>15 education perhaps, to accept its fairness, maybe there</p> <p>16 will be less resistance. But we are all going to have to</p> <p>17 contend with that.</p> <p>18 So, again, I support very much the comments about the</p> <p>19 importance of adaptability in the future. I hope we can</p> <p>20 all look forward to that. I thank the DEQ staff and EPA</p> <p>21 staff and everybody involved for all their work on this.</p> <p>22 It has been a long -- a long haul. I think the details of</p> <p>23 implementation are going to reveal the need for some</p> <p>24 fine-tuning, but it's time to get on with it.</p> <p>25 Thank you.</p> <p style="text-align: right;">40</p>	

